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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,792	05/25/2001	Jean-Pierre Giraud	5094.056	4413

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GREENBERG TRAUIG, LLP
885 3RD AVENUE
NEW YORK, NY 10022

EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/865,792

Applicant(s)

GIRAUD, JEAN-PIERRE

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 12, 13, 29, 32, 33, 40, 43, 44, 53, 56, 57, 105, 107 and 108 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 12, 13, 29, 32, 33, 40, 43, 44, 53, 56, 57, 105, 107 and 108 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

The proposed drawing correction filed 8/14/03 has been disapproved sine they enter new matter in the disclosure. Therefore the previous drawing is maintained below.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "cap has a spout that projects from a side upwardly, the spout formed integrally with the cap and includes front and rear walls that converge to an outwardly protruding tip of the spout", "a valve located adjacent to or incorporated in to the spout wherein the valve substantially prevents a liquid from leaking out of the spout" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The incorporated by reference documents are referenced for the valve the specification is silent as to the construction of the spout.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

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to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 12, 29, 32, 43, 53, 56, 105, 106, and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noll (US 3,661,288) in view of Kupperman et al (US 4,301,942). Regarding claims 9 and 12, Noll as seen in Col. 1, lines 19-25, teaches a child's drinking container where the walls can be made of rubber, polyethylene, or polypropylene and teaches the insulation is optional and that the reinforcing elements are used as required but does not specifically teach that the device can be made without the reinforcing elements. Kupperman et al teaches a container with spaced walls where there is no need for the reinforcing elements. It would have been obvious to one of ordinary skill in the art to that when the container of Noll is made of polyethylene or polypropylene the reinforcing elements are not required as taught by Kupperman et al since these thermoplastics are self supporting where the rubber is not. See Figs. 1-4 of Noll, the cap is 110 where 112 is the spout. The wall on one side of the spout is the front wall and the wall on the other side of the spout is the rear. The walls converge as seen in Fig. 2. The claims do not specify any shape for the spout and allow for the shape as presented in the reference. The term cup does not require any structure that is not in the reference. There is no structure required by the test method limitation that is not in the combination of references. The modified container of Noll is capable of meeting the test limitations. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies the limitation. Regarding

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claim 12, the container of the reference will satisfy the drop test method. Regarding claims 29, and 32, the valve is the spout or nipple and will substantially prevent a liquid from leaking out of the spout. It is inherent that the structure will have a small enough opening to substantially prevent a liquid from leaking out of the spout. Regarding claims 40 and 43, see Fig. 1 where the volume is shown on the side of the container in ounces. Regarding claims 53 and 56, see Col. 1, lines 20 and 21 where the plastic material of the cup can be polyethylene or polypropylene. Regarding claim 105, 107, and 108, see Col. 1, lines 15 and 16, where 106 and 108 are separated by an air space. Regarding claim 13, the modified container of Noll discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the thickness of the walls, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claim 33, the valve is the spout or nipple and will substantially prevent a liquid from leaking out of the spout. It is inherent that the structure will have a small enough opening to substantially prevent a liquid from leaking out of the spout.

Claims 9, 12, 13, 29, 32, 33, 40, 43, 44, 105, 107, and 108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (US 2,895,636) in view of Bachman et al (US 5,890,621). Regarding claims 9 and 12, Martin teaches the claimed invention but does not teach the spout on the cap. Bachman teaches a cap with a spout. It would have been obvious to modify the cap of Martin with the structure of Bachman et al to

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provide for a drinking cup for young children as taught by Bachman. The term cup does not require any structure that is not in the reference. The container will inherently meet the test method limitations. Moreover, there is no structure required by this limitation that is not in the reference. The cup is made from thermoplastic. The inner cup is receivable in the outer cup since as seen in the drawings it is inside the outer cup. Since the inner cup is inside the outer cup it satisfies the limitation. Regarding claim 12, there is no structure required by the method that is not in the combination of references. Regarding claim 13, the modified structure of Martin discloses the claimed invention except for the thickness of the walls and the spacing between the inner and outer walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall spacing or to vary the thickness of the walls, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Regarding claims 29, 32, and 33, the modified cup of Martin has a valve located adjacent to or incorporated into the spout that substantially prevents a liquid from leaking out of the spout. This is seen in Fig. 3 of Bachman et al. Regarding claims 40, 43, and 44 the modified container of Martin discloses the claimed invention except does not teach that the volume capacity for the inner cup is between 6-9 ounces. It would have been an obvious matter of design choice to vary the size of the cup, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Moreover, the claimed volume capacity range is

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common or typical of drinking cups. It would have been obvious to make the cup of a common size. Regarding claims 105, 107, and 108, see Col. 2, lines 32-35, where the space between the shells 18 and 23 has air therein. This is called an insulating air space.

Claims 53, 56, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Bachman et al as applied to claims 40, 41, 43-46, and 48 above, and further in view of Kennedy et al. Regarding claims 53, 56, 57, the modified cup of Martin teaches making the container of polystyrene but does not teach the polyethylene or polypropylene. Kennedy et al, as seen in Col. 2, teaches a similar container where polypropylene and polyethylene can be used in place of polystyrene. It would have been obvious to employ the plastics of Kennedy et al in the modified container of Martin to provide alternative plastic materials.

Response to Arguments

Applicant's arguments with respect to claims 9, 12, 13, 29, 32, 33, 40, 43, 44, 53, 56, 57, 105, 107, 108 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 8/14/03 have been fully considered but they are not persuasive. Regarding the Martin and Bachman combination. The combination of the two references has the claimed uninterrupted gap.

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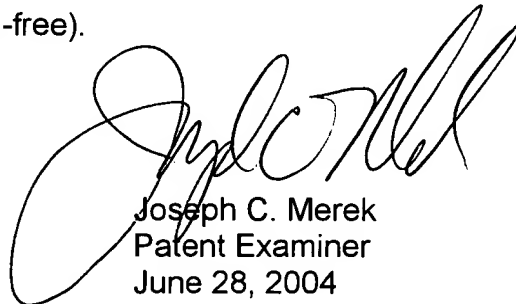
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kline and Signorini are both cited for teaching drinking devices for children that are insulated.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Patent Examiner
June 28, 2004